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MEMORANDUM

TO: Howey-in-the-Hills Planning Board
CC: J. Brock, Town Clerk
FROM: Thomas Harowski, AICP, Planning Consultant
SUBJECT: 440 Avila Place Variance Request
DATE: May 1, 2024

The property owner at 440 Avila Place has requested variances from Section 5.01.10 Workshops to allow placement of a workshop on the applicant's property in the street side yard. The proposed workshop is already in place, and the requested variances would allow the workshop to remain. Section 5.01.10 reads as follows:

5.01.10 Workshops

A workshop is an accessory structure used for actively pursuing a craft or hobby such as pottery, woodcraft, etc. A workshop shall be served by electricity and shall conform to the standards for storage sheds (5.01.09) and to the standards for all accessory structures (5.01.03).

Sections 5.01.09 and 5.01.03 are attached as part of this report. As noted the workshop locational requirements are the same as required for sheds and for all accessory structures. The applicant is seeking relief from Section 5.01.09 C which requires workshops to be placed in rear yards at least five feet from the rear property line, and from Section 5.01.03 B and 5.01.09 D which require workshops in excess of 144 square feet to have the same finish as the house and be painted a neutral color matching the primary color of the house.

The applicant has submitted a survey showing the proposed location for the workshop and submitted a statement as to the conditions that support the variance request. The survey shows the house with a pool and pool deck to the rear of the house. The pool and pool deck use all of the area available to the rear of the house thus forcing any accessory structure to be placed in a side yard. The side yard to the left of the house is too small for the planned workshop, thus leaving the street side yard as the available location. The survey shows a 6-foot high fence set 10-feet off of the property line to enclose the street side yard area where the proposed workshop is to be located. As noted above the fence is already in place with the workshop placed behind the fence. The workshop roof is visible above the fence.

The proposed workshop is a kit design that has a barn-style roof. The applicant reports the workshop size is 12 feet by 24 feet for a total of 288 square feet. The data supplied by the applicant states the sehd height is 11 feet at the center peak of the roof and a little over six feet in height at the eave area. The applicant stated the building would be served by electric power and contain a work bench meeting the definition for a workshop. The roof of the workshop is visible above the fence.

The proposed placement as shown on the survey does not fully match the description in the application. The application states the building would be located five feet from the rear property line and three feet from the side property line. The assumption is that the three foot spacing would be from the fence rather than the side property line. The drawing on the survey shows different dimensions with the measurement to the rear propety line being 4'8" and 2'5" from the fence. The building would be located 11'9" off of the pool deck according to the note on the survey drawing. The survey shows 33'7" from the edge of the house to the property line suggesting the proposed dimensions will not work. Adding the distance from the property line to the fence (10'0"), the distance from the fence to the workshop (2'5"), the width of the workshop (12'0") and the proposed distance from the pool deck (11'9") gives a distance of 36'2". The workshop, if approved, will likely need to be placed closer to the edge of the pool deck. It is also important to keep sufficient distance between the proposed workshop and the fence to allow the area between the two to be properly maintained. Access to the side yard was not available during the site visit to confrim the dimensions as they currently exist.

The house is painted stucco as are most of the homes in the Talichet subdivision. The applicant claims that the workshop building design will not support a stucco coating and is asking for approval to paint the building to match the primary house color.

Summary of the Request

To properly frame the issue being presented to the Planning Board for consideration, **the applicant is asking for approval to place the proposed workshop in the street side yard and to paint the building to match the house primary color rather than match both color and material.** There is more than sufficient area to allow the proposed structure to meet the five-foot rear setback for accessory structures, so a lesser setback should not be considered. The actual impacts physically and visually can be assessed since the structure is in place, presumably without a permit.

In the written application, the applicant stated that the workshop is medically necessary to support therapudic hobby activity, and the structure would not support the additional weight required for the addition of a stucco finish. The choice of the property owner to add a pool behind the house forces the workshop into the street side yard where it is proposed. The proposed fence should shield much of the proposed structure from public view, although the roof projects about five feet above the top of the fence.

In order to recommend the variance, the Board must find that criteria A, B and C are met. If the applicant plces the building at least five feet from the rear property line and sufficiently far from the proposed fence to allow adequate room for maintenance,

criteria D and E can be met. In this case the applicant chose to construct a pool behind the house using all of the area that would allow for the placement of a workshop fully in compliance with the code. The Board can determine if the choice to prioritize a pool over a workshop obviates the opportunity for a variance or whether the applicant is entitled to both activities thus supporting the variance.

Criteria for Granting a Variance

Section 4.13.04 of the land development code lists the criteria for granting a variance. These criteria are listed below.

- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district,
- B. That the special conditions and circumstances do not result from the actions of the applicant,
- C. That literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant,
- D. That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure, and
- E. That the granting of the variance will be in harmony with the general intent and purpose of this LDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- F. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this LDC.

5.01.03 All Accessory Structures

- A. There shall be a permitted principal structure in full compliance with all development standards and requirements of this LDC prior to issuance of a permit for an accessory structure. This provision shall not be construed to prohibit the establishment of an accessory structure simultaneously with the establishment of a permitted principal structure.
- B. There shall be no more than two (2) accessory buildings (shed, workshop, etc.) on a residential lot, not including a detached garage. Detached garages shall not exceed 625 square feet on the first floor. Detached garages and workshops that exceed 144 square feet shall have the same building finishes as the primary structure, including exterior materials (i.e., stucco, siding, brick) and color.
- C. Accessory structures shall be shown on any site plan with full supporting documents as required by this LDC.
- D. Accessory structures shall be included, if applicable, in all calculations of impervious surface and stormwater runoff requirements. (Some structures such

as fences and playground equipment would not constitute an impervious surface.)

- E. With the exception of signs and fencing, accessory structures shall not be located in any required buffer or landscape area.
- F. All accessory buildings shall comply with the setback requirements as outlined in the zoning district regulations. Gazebos and similar accessory structures of 300 square feet or less may not be placed closer than ten (10) feet to the rear and side lot lines, and are not permitted in the front yard.

5.01.09 Storage Sheds

- A. Storage sheds are permitted as an accessory structure subject to the provisions of Section 5.01.03 and the provisions of this section.
- B. Storage sheds shall not be permitted in front of the rear plane of the principal structure and shall not be permitted beyond the plane of the side of the principal structure on a street side yard.
- C. Storage sheds shall be placed in rear yards at least five (5) feet from rear property lines and shall not extend beyond the plane of the sides of the principal structure.
- D. Storage sheds that exceed 144 square feet shall be painted a neutral color matching the base color of the dwelling. Where the principal structure is constructed of a natural material such as brick or stone, sheds exceeding 144 square feet shall be painted a neutral color matching primary structure or complementary to the color of the principal structure. Sheds which are site built shall use the same materials and colors as the principal structure whenever possible. Sheds over 144 square feet shall comply with the setback requirements for accessory structures as set forth in Section 5.01.03F.
- E. Storage cabinets measuring less than 30-inches in depth and 36-inches in width and less than 72-inches in height may be placed on a property without permit provided the storage cabinet is placed adjacent to the rear of the principal structure, detached garage, or storage shed. Storage cabinets shall not count towards the two permitted accessory structures.
- F. The Planning Board may approve the placement of shed in another location on the subject property based upon a finding that a location complying with Subsections B and C above is not practical due to specific site conditions such as steep slopes, tree preservation, site access limitations or other conditions that the Planning Board finds relevant. In no case shall the Planning Board approve a shed location in any front yard. This section is not intended to prohibit a property owner from seeking variance to the code using the procedures set forth in Chapter 4.